IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1264 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

GUJ. ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 1264 of 1990

MR NILESH A PANDYA for Petitioner No. 1-2

MR KS NANAVATI for Respondent No. 1

RULE SERVED for Respondent No. 2-4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/05/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Nilesh A. Pandya for the petitioner. Mr. K.S.Nanavaty, learned advocate for the respondent No.1 has not remained present when the

matter has been taken up for hearing. Notice issued by this Court has been served upon the respondents. However, respondents Nos. 2 to 4 have not appeared before this Court either in person or through any advocate. Therefore, the matter has been taken up for hearing in their absence. In this petition, no reply has been filed by the respondent No.1.

It is the case of the petitioners that they were the employees of Karjan Nagar Panchayat in its electricity department. Said electricity department of the said Karjan Nagar Panchayat has been taken over by the respondent Board. At that time, the petitioners were working with the panchayat. According to Mr. Pandya, the petitioners were getting the pay as per the fixation made according to the IVth Pay Commission from the panchayat when the respondent Board took over the electricity department of the said panchayat. Learned advocate Mr. Pandya has pointed out that as per page 28, salary of the petitioner has been fixed as per the recommendations made by the IVth Pay Commission and according to the policy of the respondent Board, while taking over the electricity department of the panchayat, they have to protect the last salary of each of the petitioner. He has submitted that the last salary has been protected initially by the respondent Board but subsequently by order dated 12th February, 1990, salary of the petitioner has been refixed and as a result thereof, salary has been reduced and that is how the present petition has been filed. He has produced copy of the letter dated 17th August, 1990 which is ordered to be taken on record. He further points out that on 17th August, 1990, Dy. GM (P) has addressed a letter to the learned advocate Mr. K.S. Nanavaty in respect of the present matter wherein it has been observed in para 1 and 2 as under:

"The employees of Karjan Nagar Panchayat, Karjan were after interview given fresh appointments by the Board on taking over distribution of electricity supply within Karjan Nagar Panchayat after revocation of the electric license granted by the Government to the said nagar panchayat for distribution of the energy within the area of supply. The employees were appointed as a fresh recruit without continuity and past liability. However, as a policy adopted by the Board, since October 1978, the Board is protecting their last pay drawn while giving such fresh appointments if found suitable.

The employees of Karjan Nagar Panchayat who were recruited afresh in the Board were entitled to the benefit of Fourth Pay Commission appointed by the Government.But before they could be granted this benefit, license of Karjan Nagar Panchayat was revoked by the Government and employees found suitable were given appointment as fresh with their last basic pay drawn in the nagar panchayat. The Board is agreeable to refix their basic pay as per the formula of FOurth Pay Commission if they are entitled for according to FOurth Pay Commission Report. This is subject to the condition if they withdraw the petition."

Thus, as per the contents of the letter dated 17th August, 1990 issued by the Dy GM (P) of the respondent Board, the Board is agreeable to refix their basic pay as per the formula of FOurth Pay Commission if they are entitled for according to FOurth Pay Commission Report if the petitioners withdraw this petition. In the said letter, it has been made clear that while taking over the electricity department of the panchayat in the GE Board, whatever last basic salary of the workmen has been protected by the Board. However, at page 33 by letter dated 12th February, 1990, an order has been passed and the salary has been refixed and ultimately, salary of each of the petitioner has been reduced by the Board and the said order has been passed by the Board without hearing the petitioners and, therefore, considering these facts that the order in question dated 12th February, 1990 has been passed without hearing the petitioners and is having adverse effect and civil consequences, therefore, that order is required to be quashed and set aside. It is also clear that pursuant to the said letter dated 12th February, 1990, the respondent Board has recovered the amount from each of the petitioners with effect from 1st September, 1986.

In the result, this petition is allowed. Order dated 12th February, 1990 passed by the respondent Board is hereby quashed and set aside with a direction to the respondent Board to refix the salary of each of the petitioners herein at the basic salary of Rs.1240.00 and accordingly, after fixing their salary, whatever benefit is available to the petitioners, same will have to be paid by the respondent Board to the petitioners with effect from 1st February, 1986 within two months from the date of receipt of copy of this order. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.3/5/2002 (H.K. Rathod,J.)

Vyas